




MEMORANDUM

PMPS
Agenda Item No. 3 (B)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners
DATE: June 18, 2004

FROM: George M. Burgess
County Manager 

SUBJECT: Ordinance Amending Sections 2-8.1 and 10-38; Contractor Responsibility Determinations for County Contracting

RECOMMENDATION

It is recommended that the Board adopt the attached Ordinance amending Sections 2-8.1 (j) and 10-38 of the Code of Miami-Dade County governing contractor responsibility.

BACKGROUND

In 1999, an informal, interdepartmental Contractor Performance Committee was established to address issues related to contractor performance. The Committee was chaired by the County Manager's Office and comprised of staff from the Department of Procurement Management, Department of Business Development, Audit and Management Services, the County Attorney's Office, the Ethics Commission, the Inspector General and major construction contracting departments. Among other things, the Contractor Performance Committee was charged with developing policies and procedures for the evaluation of contractor performance. The Committee proposed a comprehensive ordinance and administrative order governing contractor responsibility, administrative suspension and debarment. When that legislation was presented in May 2002, it was deferred by the Board with instructions to prepare revisions that include greater checks and balances to ensure that the legislation is not onerous or unfair to vendors that do business with the County.

The Code already requires responsibility determinations per Section 10-38(a)(1), yet there is currently no description of criteria or process for such determinations. This legislative amendment differs from the May, 2002 proposal in that the Administrative Order establishes a process for consistent application of the responsibility determination criteria and the necessary oversight to ensure level and even-handed application and centralized accountability. Determination of contractor responsibility includes consideration of factors relating to the contractor's capability to perform the contract and the firm's record of integrity. The evaluation extends to the firm's principals and supervisory personnel. Determinations of nonresponsibility for contracts over twenty-five thousand dollars (\$25,000) may be challenged by the vendor via the County's bid protest provisions contained in Section 2-8.4 of the Code and A.O. 3-21.

This item is accompanied on today's agenda by the Contractor Responsibility Administrative Order which establishes criteria governing responsibility determinations as well as the internal process for making determinations. Upon approval of the new A.O. by the Board, the Department of Procurement Management and the Office of Capital Improvements

Construction Coordination will sponsor seminars for all County staff on the new legislation detailing all aspects of contractor performance and responsibility.

The Capital Improvements Coordinator will review the responsibility determinations of County department directors for construction contracts and architectural and engineering services. In the event that the Capital Improvements Coordinator disagrees with the determination of the director of an issuing department, the Capital Improvements Coordinator shall submit a written report to the County Manager for a final determination

The County Manager, in consultation with the Department of Procurement Management Director and the director of the user department(s), will make the determination of contractor responsibility for contracts for goods and services established by DPM. The department uses several tools to make the determination. A "competency survey," or pre-evaluation of the contractor based upon experience, financial support and the proper facility to conduct business, is conducted for all prospective awardees that have not previously performed work for the County. References may be requested on a contract-by-contract basis. DPM also utilizes its Pre-Award Vendor Information Intranet site to verify that recommended vendors are eligible for contract award and are compliant with County requirements. The Pre-Award Vendor Information site contains links to the following information:

- ◆ Debarment List of Contractors
 - Compiled by DBD
 - List includes
 - Names and contact information of debarred vendors
 - cause for debarment, effect of debarment and termination dates
- ◆ Registry of Delinquent Contractors
 - Compiled by the Finance Department
 - Lists contractors who are in arrears to the County
- ◆ Compliance/Minority Reports-History of Violations
 - Compiled by DBD
 - List policy, as well as violations for CSBE goals, Responsible Wages, Living Wages and QNIBP
- ◆ Suspended Contractors and Contractors with Complaints and Restrictions
 - Compiled by the Building Department
 - Used to determine if contractors are in compliance with building codes
- ◆ Convicted Vendor List
 - Compiled by the State of Florida
- ◆ Suspended Vendor List
 - Compiled by the State of Florida
 - Lists vendors that have failed to comply with the terms and conditions of their contracts and have been suspended or removed from contracting with the State of Florida


DPM also relies on the Vendor Registration process that requires vendors to attest to nine affidavits including, but not limited to debarment, disclosure and current status of obligations to the County. Finally, DPM consults with the Inspector General, Audit and Management

Services, the Office of Public Corruption and the County Attorney's Office in matters of alleged vendor impropriety or criminal negligence.

FISCAL IMPACT

Although not measurable, the approval of this ordinance is expected to have a positive fiscal impact on Miami-Dade County in the form of decreased administrative and litigation costs resulting from disputes related to contractor nonperformance, as well as reduced reprocurement costs incurred when a contractor fails to perform.

Attachment

A handwritten signature in black ink, appearing to read 'Alex Muñoz', is written over a horizontal line.

Alex Muñoz
Assistant County Manager



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: May 11, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 6(O)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6 (O)
5-11-04

ORDINANCE NO. _____

ORDINANCE PROVIDING FOR AN ADMINISTRATIVE ORDER TO ESTABLISH PROCEDURES FOR DETERMINING CONTRACTOR RESPONSIBILITY IN COUNTY CONTRACTING; AMENDING SECTIONS 2-8.1 AND 10-38 OF THE CODE OF MIAMI-DADE COUNTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Section 2-8.1 of the Code of Miami-Dade County, Florida, is hereby amended as follows:¹

Sec. 2-8.1

* * *

>>(j) Contractor responsibility.

The County shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Determinations of contractor responsibility shall be governed by procedures established by administrative order approved by the Board of County Commissioners. <<

Section 2. Section 10-38 of the Code of Miami-Dade County, Florida, is hereby amended as follows:

Sec. 10-38

(a) Purpose of debarment:

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

(1) The County shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. >>Determinations of contractor responsibility shall be governed by procedures established by administrative order approved by the Board of County Commissioners.<< ~~[[To effectuate this policy, the debarment of contractors from County work may be undertaken.]]~~

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective within ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 6. This ordinance does not contain a sunset provision.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

RAG

Prepared by:

HBJ

Hugo Benitez